that it will produce intoxication when taken in such quantities as may practically be drunk. *Sandoloski* v. *State,* 65 Tex. Cr. R. 33. Generally, however, it is immaterial whether the decoction was intended for use as a beverage, provided it is capable of use as such, and is sold in evasion of the prohibitory legislation. *State* v. *Kezer,* 74 Vt. 50. But the presumption is that medicinal, toilet and culinary preparations, recognized as such by standard authority (such as the United States Dispensary), and not reasonably capable of use as intoxicating beverages, are not ordinarily to be regarded as within the meaning of the statute. *Mason* v. *State,* 1 Ga. App. 534. Still, the presumption may be rebutted and such products be found to be within the statute. *State* v. *Intoxicating Liquors and Vessels,* 118 Me. 198. Except in clear cases where the principle of judicial notice may be invoked, *Mundy* v. *State,* 9 Ga. App. 835, the question whether a given liquid is or is not a beverage is for the jury. *State* v. *Miller,* 92 Kan. 994, L. R. A. 1917 F, 238, and cases there collected.

JUDGMENTS—ABSENCE OF COUNSEL AS UNAVOIDABLE CASUALTY EXCUSING DEFAULT.—Counsel was engaged and put in possession of all the facts and records necessary for the defense of an expected suit. Because of illness in his family, such counsel was excused from attendance at the regular term of chancery court and informed there would be no special term by the chancellor. The expected suit was commenced in his absence. The party, relying upon his counsel, did nothing more than leave a copy of the summons served upon him at the office of his counsel. In the absence of any appearance judgment by default was taken. An action was brought to set aside the judgment on the grounds of "unavoidable casualty or misfortune preventing the party from prosecuting or defending," as provided by statute. *Held* (McCullough, J., dissenting): It was through the acts of the court that the party did not defend, and this was unavoidable casualty. Judgment vacated. *Berringer* v. *Stevens* (Ark., 1920), 225 S. W. 14.

Under a like statute, the absence of counsel because of his own negligence was *held* not to be "unavoidable casualty" as would justify setting aside of a judgment taken by default. *Wagner* v. *Lucas* (Okla., 1920), 193 Pac. 421.

Statutes providing for vacating of judgments by default because of unavoidable casualty or misfortune or excusable neglect are common. Pure negligence or lack of diligence is not unavoidable casualty within the meaning of the statute. *Sparks* v. *Ober & Sons Co.,* 138 Ga. 316; *Gooden* v. *Lewis,* 101 Kan. 482. Vacation of the judgment has been refused where: answer not made because of forgetfulness, *Jones* v. *Bibb Brick Co.,* 120 Ga. 321; attorney was not obtained because of lack of diligence, *Forest* v. *Appelget,* 55 Okla. 515; train missed and appeal forgotten, *Nye* v. *Sochor,* 92 Wis. 40. Unavoidable casualty is rather some event which human foresight, prudence or sagacity could not prevent. Courts have held as grounds for vacating judgments such acts as: sickness, *Liggett* v. *Worall,* 98 Ia. 529; miscarriage of the mails, *Chicago, R. I. & Pac. Co.* v. *Eastham,* 26 Okla. 605; rail-

road accident delaying attorney, *Omro* v. *Ward*, 19 Wis. 233; accidental shooting preventing appearance, *Hargis* v. *Begley*, 129 Ky. 477; party insane, *Southern Nat. Life Ins. Co.* v. *Ford's Admr.*, 151 Ky. 476; party imprisoned, *Bonell* v. *R. W. & O. R. R. Co.*, 12 Hun. 218. There is a relation of principal and agent between client and counsel. So the neglect of the attorney in permitting judgment to be taken against his client is the neglect of the client and cannot be urged as grounds for vacating the judgment. *Moore* v. *Horner*, 146 Ind. 287; *Ham* v. *Person*, 173 N. C. 72. Even when the client is free from all fault. *Phillips & Co.* v. *Collier*, 87 Ga. 66. So, too, when the neglect of the attorney is excusable, this is as much available as grounds to set aside the judgment as though it had been the excusable conduct of the party. *Melde* v. *Reynolds*, 129 Cal. 308; *Collier* v. *Fitzpatrick*, 22 Mont. 553. A few courts hold the neglect of counsel may be considered surprise or unavoidable casualty on the part of the client, and vacate the judgment. *Swathney* v. *Savage*, 101 N. C. 103. It seems that the party must assume the risk of selecting a careful and diligent attorney. Each party is entitled to his day in court, but both must take advantage of his opportunities and be diligent in prosecuting or defending. If one party is negligent the other party should not be put to further inconvenience and the risk of losing his judgment by the setting aside of that judgment and a new trial. But if one party suffers unavoidable casualty or misfortune, such is a proper basis for setting aside the judgment. The negligence of counsel should not be considered unavoidable casualty. Just what facts show such misfortune is a question over which the courts are in confusion. The decision must of necessity be left largely to the discretion of the trial court. Upon these principles the principal cases appear to be correctly decided. In the Oklahoma case mere neglect of counsel was not considered unavoidable casualty. On the other hand, in the Arkansas case there was no negligence on the part of counsel or party, but rather an event which human foresight could not prevent, the mistake of the court. See also *Hodges* v. *Alexander*, 44 Okla. 598; *Anaconda Mining Co.* v. *Saile*, 16 Mont. 8.

MASTER AND SERVANT—EMPLOYER CONTRACTING WITHOUT EXPECTATION OF PROFIT MERELY TO PROVIDE DOCTORS FOR EMPLOYEES NOR LIABLE FOR LATTER'S NEGLIGENCE IN ATTENDING THEM.—A coal company employed a physician to give medical treatment to its employees, deducting a small sum each month from their wages, out of which his salary was paid. The company itself derived no profit from the fund. In an action by the administrator of an employee for damages on account of the negligence of the physician so employed which resulted in the death of the plaintiff's intestate, *held*, that the company was not liable in the absence of a showing of lack of ordinary care in the selection of the physician, or a retention with knowledge of incompetency. *Virginia Iron, Coal & Coke Company* v. *Odle's Admr.* (Va., 1920), 105 S. E. 107.

In the absence either of an express contract on the part of the employer to furnish skilled medical treatment, or a profit accruing to the latter from